

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERARDO MOTA BAUTISTA, HUGO
BAUTISTA, JUAN LUIS OVANDO
ZEPEDA, JUAN ZEPEDA, JULIO
RICARDO ALVAREZ MACATOMA,
LEONCIO TORRES ACUNA, MARIO
MORALES ROJAS, OMAR RODRIGUEZ,
and ANTONIO LIMON HERNANDEZ
*individually and on behalf of others similarly
situated,*

Plaintiffs,

vs.

COUNTY-WIDE MASONRY CORP.,
CARBEN INDUSTRIES, INC., CARBEN
CONCRETE, INC., CARBEN
CONSTRUCTION, INC., ANTHONY
DERASMO, ANTHONY LOGIUDICE,
RONALD BROWNING, and MARTIN DOE
a/k/a PERU

Defendants.

CARBEN INDUSTRIES, INC.

Third Party Plaintiff,

vs.

BATRUME INDUSTRIES, INC. and
COUNTY-WIDE CONSTRUCTION CORP.,

Third-Party Defendants.

INDEX NO.: 19-cv-08808

Civil Action

**DEFENDANTS CARBEN INDUSTRIES, INC.,
CARBEN CONCRETE, INC., CARBEN
CONSTRUCTION, INC., ANTHONY
LOGIUDICE AND RONALD BROWNING'S
RESPONSE TO PLAINTIFFS' STATEMENT
OF ADDITIONAL FACTS**

Defendants Carben Industries, Inc., Carben Concrete, Inc., Carben Construction, Inc., Anthony Logiudice and Ronald Browning (collectively, “Carben”), by their attorneys, Tesser & Cohen, respectfully submits this Response to Plaintiffs’ Statement of Additional Facts. Any additional facts referenced herein are included in Carben’s separate Motion for Summary Judgment and its own Statement of Material Facts submitted in support of same.

**CARBEN DEFENDANTS’ RESPONSE TO THE PLAINTIFFS’
STATEMENT OF ADDITIONAL FACTS**

1. The Plaintiffs have never heard of Batrume Industries. (Acuna Dep. 15:5-7, Rodriguez Dep. 20:13-15, Bautista Dep. 38:8-10, Rojas Dep. 26:7-8, Ovando-Zepeda Dep. 20:8-10).

Carben Response: Undisputed that Plaintiffs’ testified to this fact.

2. The Plaintiffs were employed by County-Wide. (Rodriguez Dep. 11:7-8, Mota Bautista Dep. 46:23-25, 47:1-14, Acuna Dep. 10:4-5, Rojas Dep. 9:16-18., Exhibits A-D to Errington Affirmation)

Carben Response: Undisputed that Plaintiffs’ testified to this fact.

3. Plaintiffs worked for County-Wide’s at job sites in both Manhattan and Brooklyn. (Ovando-Zepeda Dep. 10:5-10, Rodriguez Dep. 13:11-14, Mota Bautista Dep. 22:8-12, Acuna Dep. 10:11-14, Rojas Dep. 10:18-23)

Response: Undisputed that Plaintiffs’ testified to this fact.

4. As part of County-Wide’s contract with Rinaldi Group, they agreed to provide labor to the job site located at 120 Water St. (Ex. E to Errington, Sec. 1.1)

Carben Response: Undisputed insofar as the contract between County-Wide and Rinaldi speaks for itself.

5. As part of County-Wide's contract with Rinaldi Group, they agreed to certain conditions regarding the labor they would supply to the job site located at 120 Water St. (Ex. E to Errington Aff., Sec. 7.4)

Response: Disputed as the "conditions" are not defined, material, and the contract speaks for itself.

6. As a part of County-Wide's contract with Noble Construction, Countywide agreed to provide labor to the job site located at 120 Water St. (Ex. F to Errington Aff., Sec. 1,1)

Carben Response: Undisputed insofar as the contract speaks for itself.

7. As a part of County-Wide's contract with Noble Construction, Countywide agreed to certain conditions regarding the labor they would supply to the job site located at 70 Schermerhorn. (Ex. F to Errington Aff., Sec., 7.4)

Carben Response: Disputed as the "conditions" are not defined, material, and the contract speaks for itself.

8. County-Wide was compensated for providing labor and materials under contracts Rinaldi Group and Noble Construction. (Derasmo Dep. 51:20-25, 52:51:2-19).

Carben Response: Carben has no personal knowledge to admit or deny this allegation.

9. Pursuant to Carben's contracts with County-Wide, County-Wide retained certain responsibilities for the wages and hours worked by laborers at both 120 Water St. and 70 Schermerhorn. (Ex. I, Sec. 3.4, Ex. M., Sec. 3.4)

Carben Response: Disputed. No evidence has been put forth by Plaintiff that Carben supplied any of its own labor, or employed any laborers for either Project. Carben did hire

a sub-subcontractor, Batrume Industries, Inc., to provide certain labor services to the Projects. However, no evidence has been presented by Plaintiffs that any of them were employed by Batrume Industries, Inc. either. See Carben's Statement of Material Facts